REMARKS

These amendments and remarks attend to all issues presented in the Office Action mailed March 18, 2008. Claims 5-9 and 11-19 are pending in the application. Claims 5, 8, 13 are currently amended.

Claims 5, 8, 13 have been amended to recite a limitation that the wheat protein isolate comprises wheat gluten and at least one chemical selected from the group consisting of lactic acid and sulfite. Claims 17-19 are new and all recite that the wheat protein isolate comprises wheat gluten, lactic acid and sulfite. Support of the amendments and the new claims can be found at Paragraph 29 on page 5 of the Specification as originally filed.

I. Claim Rejections 35 U.S.C. § 102

Claims 5-6, 8-9, 12, 13-14, 16 stand rejected under 35 U.S.C. § 102(b), as being anticipated by U.S. Patent No. 5,403,610 issued to Murphy et al. ("Murphy" hereinafter). Applicant respectively disagrees.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference." *Verdegaal Bros. v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987). In order for Murphy to anticipate the presently claimed invention, each element of the claimed composition or method must be described expressly or inherently in Murphy.

Applicant has amended Claims 5, 8, 13 to recite that the wheat protein isolate comprises wheat gluten and at least one chemical selected from the group consisting of lactic acid and sulfite. Murphy merely mentions that the wheat protein isolate is a product called LSI from a company named Liberty Enterprises. There is no teaching or suggestion that the wheat protein isolate disclosed in Murphy comprises lactic acid or sulfite. Claims 6, 9, 12, 14 and 16 all depend from Claims 5, 8, 13 directly or indirectly and necessarily incorporate all limitations of their respective base claims. Thus, because not all limitations of the present claims are disclosed in Murphy, Murphy does not

anticipate the present claims as amended. Withdrawal of the rejections under 35 U.S.C. § 102(b) is respectively requested.

II. Claim Rejections – 35 U.S.C. § 103 over Prosise in view of Murphy.

Claims 5-9, 11-12 stand rejected under 35 U.S.C. § 103(a) as being obvious over U.S. Patent No. 4,937,086 issued to Prosise ("Prosise" hereinafter) in view of Murphy. Applicant respectfully disagrees for reasons set forth below.

Obviousness is a question of law based on underlying factual inquiries. The factual inquiries (also known as the "Graham factual inquiries") to be performed by the Examiner are as follows:

(1) Determining the scope and content of the prior art;
(2) Ascertaining the differences between the claimed invention and the prior art; and
(3) Resolving the level of ordinary skill in the pertinent art.

Examination Guidelines for Determining Obviousness Under 35 U.S.C. 103 in View of the Supreme Court Decision in KSR International Co. v. Teleflex Inc., Federal Register, Vol. 72, No. 195, 57526-35, 57526 (October 10, 2007) (the "Guidelines" hereinafter). Once the Graham factual inquiries are resolved, the Examiner must determine whether the claimed invention would have been obvious to one of ordinary skill in the art. Prior art is not limited just to the references being applied, but includes the understanding of one of ordinary skill in the art. Although the prior art reference (or references when combined) need not teach or suggest all the claim limitations, the Examiner must explain why the difference(s) between the prior art and the claimed invention would have been obvious to one of ordinary skill in the art. *Id.* at 57528.

As explained in the previous section, Murphy does not teach or suggest that the wheat protein isolate comprises lactic acid or sulfite. Prosise discloses the use of polyvinylpyrrolidone blended with water to prepare donuts having reduced fat and substantially uniform texture. No mention has been made with respect to wheat protein isolate comprising lactic acid or sulfite. Thus, substantial differences exist between the cited references and Applicant's claimed invention, and because the Examiner has not

established that these differences are such that it would be obvious for one of ordinary skill in the art to modify the prior art teaching to arrive at the claimed invention, withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

III. Claim Rejections – 35 U.S.C. § 103 over Prosise in view of Greene.

Claims 13-15 also stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Prosise in view of U.S. Patent No. 6,042,866 issued to Greene et al. ("Greene" hereinafter). Applicant respectfully disagrees.

As explained in the previous section, Prosise does not teach all the limitation of the presently claimed invention. Greene discloses reduction of oil uptake in fried food. However, neither Prosise nor Greene teaches or suggests the amount of wheat protein isolate comprising lactic acid and/or sulfite as is now claimed by Applicant. Thus, there are significant differences between the teaching of Prosise and Greene. The Examiner has not provided the rationale showing why it would be obvious to modify the prior art in order to arrive at Applicant's claimed invention. Withdrawal of the rejections under 35 U.S.C. § 103(a) is respectfully requested.

Applicant has addressed all issues raised in the Office Action dated March 18, 2008, and respectfully solicits a Notice of Allowance in the next office communication. Should any issues remain, the Examiner is encouraged to telephone the undersigned attorney.

Authorization to charge fees associated with a Petition for extension of time is submitted herewith. If any additional fee is deemed necessary in connection with this Response, the Commissioner is authorized to charge Deposit Account No. 12–0600.

Respectfully submitted,

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